ORISSA HIGH COURT,
CUTTACK

CRIMINAL APPEAL NO.51 OF 2001
A N D
JAIL CRIMINAL APPEAL NO. 32 OF 2002

From the judgment dated 31.07.2000 passed by Mr. P.K.Ray, Assistant Sessions Judge, Nimapara, in S.T. Case No.6/421(A) of 2000/1993.

Badal Behera (In Crl. A. No.51/2001)
Kartika Panda (In J.Crl.A. No.32/2002) ..... Appellants

Versus

State of Orissa (In both appeals) ..... Respondent

For Appellants - Mr. S.K.Nayak-2
(In Crl.A. 51/01)
A N D
Mr. P.K.Tripathy
(In J.Crl.A. 32/02)

For Respondent - Addl. Govt. Advocate

PRESENT:-

THE HON'BLE MR. JUSTICE PRADIP MOHANTY

Date of hearing and judgment : 21.04.2006

PRADIP MOHANTY,J. Both the Criminal Appeal and the Jail Criminal Appeal arise out of the judgment and order dated 31.07.2000 passed by the learned Assistant Sessions Judge, Nimapara, in S.T. Case No.6/421 of 2000/1993. By the impugned judgment, the appellants have been convicted under section 395 IPC and section 9(b) of the Indian Explosives Act. They have been sentenced to undergo rigorous

imprisonment for ten years and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for one year more for the offence under section 395 IPC and rigorous imprisonment for two years for the offence under section 9(b) of the Indian Explosives Act.

2. Prosecution case, in short, is that in the night of 22/23.03.1991, the informant and his son had slept in one room of their newly constructed house to the western side of the old block houses. In another room in the southern side of the old block, his wife, daughter and one friend's daughter had slept. Before going to sleep, the front and back entrance doors of the old block were bolted from inside with lock and key. At about 1.30 A.M., hearing the explosion of bomb near the front door of the old block, the appellant woke up. On coming out, he saw two persons standing in front of his bed room. The front door of the old house was broken and two persons were standing there. He also heard noise from inside. In fact, dacoits had entered inside the room where the female inmates were sleeping. They assaulted the wife and daughter of the informant and snatched away gold ornaments from their persons. They also looted other belongings. The informant assaulted the two persons, who were standing at the entrance door, by a lathi and entered inside the courtyard. He also attacked the dacoits who were committing robbery inside the room of the female folk. While chasing them out, he caught hold of one dacoit, but the others came back and assaulted him on his head and back, as a result of which, he lost his consciousness. On regaining sense, he found that apart from him, his wife and son had also been assaulted by the dacoits. His son was severely injured by knife and crow-bar on his belly and head and his wife had severe bleeding from her head and belly. The informant came out of his house and saw the miscreants running away. On hearing his cry, the local Sarpanch and about 20 to 30 villagers rushed towards his house. By that time, the dacoits already decamped along with the booty. The matter was reported to police, who investigated into the case and seized some material objects including the chance finger

prints on two steel containers and took photograph of the same. Receiving information from the O.I.C., Balipatna P.S. that two of the dacoits were apprehended along with stolen articles, the I.O. went there, interrogated the culprits and seized some stolen articles. He also arrested some other culprits and seized some more articles. He took the finger prints of the accused persons and got the same compared with the finger prints appearing on the steel containers by the Finger Print Expert. On completion of investigation, charge-sheet was submitted against the accused persons.

3. In the midst of trial, the present appellants remained absent and did not appear before the trial court. Therefore, the case against them was split up. After their arrest, they stood the trial.

4. The defence plea is one of complete denial.

5. In order to prove its case, prosecution examined as many as 21 witnesses, produced documents marked as Exts.1 to 29 and also produced material objects marked as M.Os.I to XII. P.W.1 is the informant, P.W.5 is his daughter, P.W.6 is his wife and P.W.7 is his son. P.Ws.8, 11, 12, 13, 14 and 15 are post-occurrence witnesses. P.W.9 is the Doctor who examined the injuries on the informant as well as some of the accused persons. P.W.16 is the JMFC, Nimapara, who conducted T.I. parade in respect of some stolen properties. P.W.17 is the Scientific Officer and P.W.19 is the Finger Print Expert. P.Ws.18, 20 and 21 are police officials. Defence did not choose to examine any witness.

6. After considering the evidence and materials available on record, the trial court convicted the appellants under section 395 IPC and section 9(b) of the Indian Explosives Act and sentenced them as already mentioned hereinbefore.

7. Mr. Nayak, learned counsel appearing for the appellant in Criminal Appeal No.51 of 2001, submits that no recovery has been made from this appellant. There is no allegation against him that he assaulted either the informant or any of the inmates of his house. Mr. Tripathy appearing for the appellant in Jail Criminal

Appeal No.32 of 2002 submits that there is absolutely no material against his client. Both the learned counsel also submit that prence of finger print on the steel containers is a story subsequently developed by the prosecution and the same cannot be used against the appellants.

8. Perusal of the evidence of P.Ws.1, 5, 6 and 7 shows that there were six culprits who exploded bomb at the time of committing dacoity. The post occurrence witnesses, namely, P.Ws.8 and 10, as also the I.O.-P.W.18 speak about seizure of the remnants of bombs. Though these witnesses were cross-examined at length, nothing has been elicited from them to discredit their testimony. Thus, there is ample corroboration to the statement of the informant and his family members. So, the fact of commission of dacoity in the house of P.W.1 by exploding bomb is well established. Though no T.I. parade was held for identification of the culprits, P.Ws.1 and 7 have identified the appellants in court.

9. Considering the facts and circumstances of the case, this Court does not feel inclined to interfere with the finding of the court below regarding the guilt of the appellants. However, both the learned counsel submit that the appellants being young men may be leniently dealt with. Considering this submission, this Court directs that for the offence under section 395 IPC, the appellants shall undergo rigorous imprisonment for seven years and pay a fine of Rs.5,000/-, in default undergo rigorous imprisonment for one year. For the offence under section 9(b) of the Indian Explosives Act, they shall undergo rigorous imprisonment for one year. Both the sentences shall run concurrently.

10. Subject to the modification in sentence, as indicated above, both the appeals stand dismissed.

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Pradip Mohanty, J.

Orissa High Court, Cuttack
April 21, 2006 / ***Routray***